

Consumer Product Safety Commission

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fire investigator, an electrical engineer, an ambulance attendant, or an attending physician; or

(v) The confirmation is made by a parent or guardian of a child involved in an incident involving such a product, or by a person to whom a child is entrusted on a temporary basis.

(b) The steps set forth below are the steps the Commission will take to analyze the accuracy of information which it proposes to release to the public.

(1) The Commission will review each proposed disclosure of information which is susceptible of factual verification to assure that reasonable steps have been taken to assure accuracy in accordance with § 1101.32(a).

(2) As described in subpart C, the Commission will provide a manufacturer or private labeler with a summary or text of the information the Commission proposes to disclose and will invite comment with respect to that information.

(3) If the Commission receives no comments or only general, undocumented comments claiming inaccuracy, the Commission will review the information in accordance with § 1101.32(a) and release it, generally without further investigating its accuracy if there is nothing on the face of the information that calls its accuracy into question.

(4) If a firm comments on the accuracy of the information the Commission proposes to disclose, the Commission will review the information in light of the comments. The degree of review by the Commission and the weight accorded a firm's comments will be directly related to the specificity and completeness of the firm's comments on accuracy and the accompanying documentation. Documented comments will be given more weight than undocumented comments. Specific comments will be given more weight than general comments. Further steps may be taken to determine the accuracy of the information if the Commission determines such action appropriate.

§ 1101.33 Reasonable steps to assure information release is fair in the circumstances.

(a) The steps set forth below are the steps the Commission has determined are reasonable to take to assure disclosure of information to the public is fair in the circumstances:

(1) The Commission will accompany information disclosed to the public with the manufacturer's or private labeler's comments unless the manufacturer or private labeler asks in its section 6(b) comments that its comments or a designated portion thereof not accompany the information.

(2) The Commission generally will accompany the disclosure of information with an explanatory statement that makes the nature of the information disclosed clear to the public. The Commission will also take reasonable steps to disclose any other relevant information it its possession that will assure disclosure is fair in the circumstances.

(3) The Commission will limit the form of disclosure to that which it considers appropriate in the circumstances. For example, the Commission may determine it is not appropriate to issue a nationwide press release in a particular situation and rather will issue a press release directed at certain localities, regions, or user populations.

(4) The Commission may delay disclosure of information in some circumstances. For example, the Commission may elect to postpone an information release until an investigation, analysis or test of a product is complete, rather than releasing information piecemeal.

(b) The Commission will not disclose information when it determines that disclosure would not be fair in the circumstances. The following are examples of disclosures which generally would not be fair in the circumstances.

(1) Disclosure of information furnished by a firm to facilitate prompt remedial action or settlement of a case when the firm has a reasonable expectation that the information will be maintained by the Commission in confidence.

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(2) Disclosure of notes or minutes of meetings to discuss or negotiate settlement agreements and of drafts of documents prepared during settlement negotiations, where the firm has a reasonable expectation that such written materials will be maintained by the Commission in confidence.

(3) Disclosure of the work-product of attorneys employed by a firm and information subject to an attorney/client privilege, if the Commission has obtained the information from the client or the attorney, the attorney or client advises the Commission of the confidential nature of the information at the time it is submitted to the Commission, and the information has been maintained in confidence by the client and the attorney.

(4) Disclosure of a firm's comments (or a portion thereof) submitted under section 6(b)(1) over the firm's objection.

§ 1101.34 Reasonable steps to assure information release is "reasonably related to effectuating the purposes of the Acts" the Commission administers.

(a) The steps set forth below are the steps the Commission has determined are reasonable to take to assure that the disclosure of information to the public effectuates the purposes of the Acts it administers.

(1) *Purposes of the CPSA.* The Commission will review information to determine whether disclosure would be reasonably related to effectuating one or more of the specific purposes of the CPSA, as set forth in sections 2(b) and 5, 15 U.S.C. 2051(b) and 2054.

(2) *Purposes of the FHSA, FFA, PPPA and RSA.* The Commission will also review information concerning products subject to the transferred acts it administers and to the Commission's specific functions under those acts to determine whether disclosure of information would be reasonably related to effectuating the purposes of those acts.

(3) *Purposes of the FOIA.* FOIA requests will be reviewed to determine whether disclosure of the information is reasonably related to effectuating one or more of the purposes of the acts administered by the Commission. In the event of a close question on this issue, the Commission will defer to the

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purposes of the FOIA. The FOIA establishes a general right of the public to have access to information in the Commission's possession, particularly information that reveals whether the Commission is meeting its statutory responsibilities or information upon which the Commission bases a decision that affects the public health and safety.

(b) In reviewing proposed information disclosures, the Commission will consider disclosing the material on the basis of whether release of the information, when taken as a whole, was prepared or is maintained in the course of or to support an activity of the Commission designed to accomplish one or more of the statutory purposes.

Subpart E—Statutory Exceptions of Section 6(b)(4)

§ 1101.41 Generally.

(a) *Scope.* This subpart describes and interprets the exceptions to the requirements of section 6(b)(1)–(b)(3) that are set forth in section 6(b)(4). These exceptions apply to:

(1) Information about a product reasonably related to the subject matter of an imminent hazard action in federal court;

(2) Information about a product which the Commission has reasonable cause to believe is in violation of any consumer product safety rule or provision under the Consumer Product Safety Act (15 U.S.C. 2051, *et seq.*) or similar rule or provision of any other act enforced by the Commission;

(3) Information in the course of or concerning a rulemaking proceeding; or

(4) information in the course of or concerning an adjudicatory, administrative or judicial proceeding.

(b) *Application to transferred act.* The Commission will apply the exceptions contained in section 6(b)(4) to those provisions in the transferred acts, comparable to the specific provisions in the CPSA to which section 6(b)(4) applies.

[48 FR 57430, Dec. 29, 1983, as amended at 73 FR 72335, Nov. 28, 2008]